

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

RECEIVED

JUL - 2 2002

SAMUEL L. KAY, CLERK
U.S. District & Bankruptcy Courts
Southern District of West Virginia

PENNY KENNEDY, RAYMOND
KENNEDY, individually
and as the legal guardians
and natural parents of
TREVOR KENNEDY,

Plaintiffs,

v.

CIVIL ACTION NO. 2:02-0906

COMMUNITY HEALTH FOUNDATION OF
MAN, WEST VIRGINIA, INC., DR.
PLARIDEL TORDILLA, individually,
CHARLESTON AREA MEDICAL CENTER,
INC., d/b/a WOMEN AND CHILDREN'S
HOSPITAL OF WEST VIRGINIA, d/b/a
WOMEN AND CHILDREN'S HOSPITAL
d/b/a CAMC CHILDREN'S HOSPITAL,
d/b/a CAMC WOMEN'S HOSPITAL, d/b/a
CAMC WOMEN AND CHILDREN'S
HOSPITAL, NEW CENTURY EMERGENCY
PHYSICIANS, INC., W.V., a West
Virginia Corporation, INPHYNET
HOSPITAL SERVICES, INC., a foreign
corporation, doing business in the
STATE OF WEST VIRGINIA, AND
GORDON J. GREEN, Individually,

Defendants.

MEMORANDUM IN SUPPORT OF
UNITED STATES MOTION TO DISMISS
COMMUNITY HEALTH FOUNDATION OF MAN, INC.
AND PLARIDEL TORDILLA, M.D.
AND SUBSTITUTE THE UNITED STATES

Community Health Foundation of Man, West Virginia, Inc.
("CHF") and Plaridel Tordilla, M.D. are named defendants in a civil
action that was filed in the Circuit Court of Logan County on or
about April 24, 2002. (Complaint) The complaint alleges,
generally, that CHF and Plaridel Tordilla, M.D., were negligent
when they failed to timely recognize, diagnose and appropriately

4

treat and care for Trevor Kennedy, and failing to adequately monitor, supervise and investigate his medical condition. As a result of their negligence, plaintiffs allege that Trevor suffered extreme pain and partial paralysis. (Complaint) The United States removed the action to district court on July 1, 2002.

At all times relevant to the complaint, CHF and Plaridel Tordilla, M.D., an employee of CHF, were "deemed" employees of the United States for purposes of 233(g) of the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act of 1992, as amended in 1995 ("the Act"). (Ex. 2) Under the Act, the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680, provides the exclusive remedy for medical and related services performed by employees of deemed entities while acting in the scope of their employment. 42 U.S.C. § 233(a).

In this case, the Attorney General, acting through his designee, the United States Attorney for the Southern District of West Virginia, has certified that the alleged actions of CHF and its employee, Plaridel Tordilla, M.D., were within the scope of their employment. (Ex. 1.) Upon said certification, this action must proceed as an action against the United States. 28 U.S.C. § 2679; 42 U.S.C. § 233(c).

WHEREFORE, the United States respectfully requests that CHF and Plaridel Tordiall, M.D. be dismissed and the United States be substituted as the proper defendant.

Respectfully submitted,

KASEY WARNER
United States Attorney

A handwritten signature in black ink, appearing to read "S. M. Horn", is written over the typed name of Stephen M. Horn.

STEPHEN M. HORN
Assistant United States Attorney
P.O. Box 1713
Charleston, WV 25326
(304) 345-2200

CERTIFICATE OF SERVICE


I, Stephen M. Horn Assistant United States Attorney for the Southern District of West Virginia, hereby certify that service of the **MOTION TO DISMISS COMMUNITY HEALTH FOUNDATION OF MAN, WEST VIRGINIA, INC. AND PLARIDEL TORDILLA, M.D. AND SUBSTITUTE THE UNITED STATES, MEMORANDUM OF LAW AND proposed ORDER** made this 2nd day of July, 2002 by mailing a true copy through the United States mail, postage prepaid, to the following:

Pamela A. Lambert, Esquire
P.O. Drawer 926
Gilbert, WV 25621

Cheryl Eifort, Esquire
Office of General Counsel
501 Morris Street
P.O. Box 3669
Charleston, West Virginia 25336

David E. Schumacher, Esquire
Schumacher, Francis and Nelson
1600 Kanawha Valley Building
300 Capitol Street
P.O. Box 3029
Charleston, West Virginia 25331

Karen Tracy McElhinny
Shuman, McCuskey and Slicer, PLLC
1411 Virginia Street, East, Suite 200
Charleston, West Virginia 25301


STEPHEN M. HORN
Assistant United States Attorney

ldj